

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, Treasurer,
Petitioner,

vs.

THE TEXAS COMPANY (P. R.), Inc.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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SUBJECT-INDEX

	PAGE
Petition	1-5
Prayer	1
Question Presented	2-3
Petitioner's Position	3-4
Statutes	4, and Appendix 33-43
Statement of the Case	4
Reasons for Granting the Writ	4-5
Brief in Support of Petition	6-31
Opinions below	6
Jurisdiction	6
Question Presented	6
Statutes Involved	6, and Appendix 33-43
Statement of the Case	6-10
Petitioner's Position	10-14
Specification of Errors to Be Urged	15
Summary of Argument	15-16
Argument	17-31
Point I—The Circuit Court of Appeals was wrong in overruling the decision of the Supreme Court of Puerto Rico as to the scope of the appeal given to em- ployers by section 9 of the Puerto Rican Workmen's Compensation Act as amended by the Act of 1925. The decision of the insular Supreme Court was clearly right	17-23

SUBJECT INDEX (Continued)

PAGE

Point II—The decision of the Circuit Court of Appeals overruling the insular Supreme Court's interpretation of this local insular statute is in conflict with the applicable decisions of this court as to the respect to be paid to the decision of a Territorial court of last resort interpreting a local Territorial statute	23-24
Point III—The Texas Company, plaintiff-respondent, had a plain, adequate and complete remedy at law by appeal from the order of the Workmen's Relief Commission of April 24, 1928; and, therefore, cannot now maintain this collateral attack upon the order by this injunction suit	24-25
Point IV—There was no possible lack of jurisdiction in the findings or orders of the Workmen's Relief Commission. No possible question of "nullity" is here involved	25-27
Point V—Since the Commission's decision was upon a question within its jurisdiction, it may not be assailed by collateral attack, such as this injunction suit	27-28
Point VI—The Treasurer's procedure to enforce payment by the Texas Company in accordance with the order of the Workmen's Relief Commission and the supplemental order of its successor, the present Industrial Commission, by attachment, is in accordance with the provisions of the local statutes, and is correct	28-30
Conclusion	30-31
Appendix	33-43

TABLE OF CASES

	PAGE
Cordova v. Folgueras, 227 U. S. 375	5,24
Diaz v. Gonzalez, 261 U. S. 102	5,24
Ex Parte Reed, 100 U. S. 13	27
Inter-Island Co. vs. Hawaii, 305 U. S. 306	5,24
Nadal v. May, 233 U. S. 447	4,24
Phoenix Ry. Co. v. Landis, 231 U. S. 578	4,24
Rafael Sancho Bonet, Treasurer v. Yabucoa Sugar Co., No. 498, present term, Supreme Court, decided March 27, 1939	4,23
Santa Fe Ry. v. Friday, 232 U. S. 694	4,24
Texas Co. v. Workmen's Relief Commission, 40 P. R. Rep. 456	8,19
Villaneuva v. Villaneuva, 239 U. S. 293	4-5,24
Waialua Co. v. Christian, 305 U. S. 91	5,24

STATUTES

FEDERAL

Judicial Code, Sec. 240(a), as amended by Act of February 13, 1925

6

PUERTO RICO

Workmen's Compensation Acts

Act No. 61 of 1921, Sec. 13 11, 12, and
Footnote 3, Appendix 38-39

Act No. 102 of September 1, 1925

Sec. 2	2, 17, 19, and Appendix 33-34
Sec. 5	11-12,12
Sec. 7	2, 18, 20, 35, and Appendix 34-35
Sec. 9	2, 17, 19, <i>et seq.</i> , and Appendix 35-36
Sec. 18	11, 12, 13, and Appendix 36-38
Sec. 20	2, 18-19, 20, 26 and Appendix 39-40
Secs. 27 and 28	17, and Appendix 40
Sec. 30	13, and Appendix 41

Act No. 85, approved May 14, 1928

Secs. 25, 48, and 47 Appendix 41

Act No. 45, approved April 18, 1935

Secs. 15 and 34	Appendix 42
Sec. 51	Appendix 43



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**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS, FIRST CIRCUIT**

*To the Honorable, The Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Petitioner, Rafael Sancho Bonet, Treasurer of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, entered in this cause on March 25, 1939, reversing and vacating the judgment of the Supreme Court of Puerto Rico and remanding the case to that court with directions to remand it to the District Court of San Juan, and to order the latter court to vacate its judgment or decree and to issue an injunction restraining the Treasurer of Puerto Rico from collecting Workmen's Compensation awards of April 24, 1928, by distress upon the Texas Company's property.

QUESTION PRESENTED

The single question presented is whether the Circuit Court of Appeals was right in holding that the judgment of the Supreme Court of Puerto Rico interpreting the local Puerto Rican statute, the Workmen's Compensation Act of its Legislature, was so "clearly erroneous" as to require reversal by the Circuit Court of Appeals, because of the Supreme Court of Puerto Rico's holding that the provision of the local statute [Sec. 9, as amended by Act No. 102, September 1, 1925] that

"the employer may appeal from any decision of the Commission when such decision is to the effect that the accident is one for which compensation is granted under this Act,"

gave the right of appeal broadly to "the employer" in any case where the Workmen's Relief Commission had held "that the accident is one for which compensation is granted under this Act", *regardless of whether the compensation assessed by the Commission was "payable from the government trust fund"* [Sec. 2, Par. 3 of the Act; "Insured employer"] or was assessed by the Commission *against the employer* [Sec. 7, last Par., and Sec. 20, "Uninsured employer"], as in the present case.

The Circuit Court of Appeals, overruling the Supreme Court of Puerto Rico, holds (R. 62-64) that the provision of section 9 of the Act giving the employer the right of appeal, as above quoted, must be read as being limited solely to the case where the compensation awarded is "payable from the government trust fund", and not as extending to the case where the compensation awarded is assessed against the "uninsured employer", to be paid by him [Sec. 7 and Sec. 20, *supra*]; and that the insular Supreme Court's interpretation of the Act as extending the right of appeal likewise to the "uninsured employer" in the latter case is so "clearly erroneous" as to require reversal, de-

spite the established rule of the respect to be paid to the decision of a Territorial court of last resort interpreting a local Territorial statute.

So holding, the Circuit Court of Appeals decided that the Texas Company, appellant there, respondent here, which had not taken any appeal from the Workmen's Relief Commission's order assessing against it, as an "uninsured employer", the compensation awarded upon the death of three of the company's employees, was entitled to maintain this collateral attack upon the Commission's award by this injunction suit, on the ground that the company had never had any right of appeal under the statute, and, therefore, no adequate remedy at law.

The other conclusions of the Circuit Court of Appeals follow upon this basic holding.

PETITIONER'S POSITION

Petitioner believes that the Circuit Court of Appeals was wrong in this; that the construction placed by the insular Supreme Court upon this local statute, allowing the right of appeal to the employer in any case where the Commission's decision is to the effect that the accident is one for which compensation is granted under the Act,—[regardless of whether the compensation is to be paid out of the government trust fund, as for an "insured employer", or by the employer himself in the case where, as here, the Commission holds him to be an "uninsured employer"],—was not so "clearly erroneous" as to require reversal by the Circuit Court of Appeals in the face of the rule of the respect to be paid to decisions of local Territorial supreme courts construing local Territorial statutes; but, on the contrary, was not at all an unreasonable interpretation of the statute, but was right and reasonable, and should have been upheld; and that, consequently, the judgment of the insular Supreme Court that the Texas Company, not having availed itself of the right of appeal in this case, could not afterwards maintain this

collateral attack upon the Commission's award, by this injunction suit, was right and should be affirmed, and the contrary judgment of the Circuit Court of Appeals reversed.

STATUTES

Pertinent statutes are in the Appendix (*infra*, pp. 33-43).

STATEMENT OF THE CASE

As indicated in the "Question Presented" above (*ante*, pp. 2-3) this was an injunction suit by the Texay Company in the insular District Court of San Juan against the Treasurer of Puerto Rico to enjoin collection by distraint of an award of the Workmen's Relief Commission of Puerto Rico [former Commission under the old 1918 Act as amended by Act No. 102 of 1925, with earlier amendments]. A fuller statement is in the accompanying Brief in Support of this Petition ["Statement of the Case", *infra*, pp. 6-10].

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals overruling the insular Supreme Court's interpretation of a local insular statute of Puerto Rico is believed to be in conflict with the applicable decisions of this court establishing the rule as to the respect to be paid to such decisions of local Territorial courts of last resort interpreting local statutes, particularly with the recent decision of this court, March 27, 1939, in No. 498 at the present term, *Rafael Sancho Bonet, Treasurer of Puerto Rico vs. Yabucoa Sugar Co.*, as well as with the earlier decisions there cited: *Nadal v. May*, 233 U. S. 447, 454; *Santa Fe Ry. v. Friday*, 232 U. S. 694, 700; *Phoenix Ry. Co. v. Landis*, 231 U. S. 578, 579; *Villaneuva v. Villa-*

neuva, 239 U. S. 293, 299; *Waialua Co. v. Christian*, 305 U. S. 91, 109; *Inter-Island Co. v. Hawaii*, 305 U. S. 306, 311; *Diaz v. Gonzalez*, 261 U. S. 102, 105, 106; *Cordova v. Folgueras*, 227 U. S. 375, 378, 379.

That rule embodies an important principle of federal law with relation to the administration of the Territories. It is of public importance that its spirit be not disregarded, nor minimized, as is done by this decision of the Circuit Court of Appeals.

Wherefore, it is respectfully requested that this petition for a writ of certiorari be granted.

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BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the insular District Court (R. 14-19, and order denying rehearing, R. 25) is not officially reported. The opinions of the Supreme Court of Puerto Rico, February 11, 1938, affirming the judgment of the District Court denying the injunction (R. 26-34), and July 13, 1938, denying reconsideration (R. 48-53), are not yet reported in the English edition of the Puerto Rico Reports, but are reported in the Spanish edition, "Decisiones de Puerto Rico" (52 P. R. Dec. 658; and [Advance Sheets] 53 P. R. Dec. 475). The opinion of the Circuit Court of Appeals is reported in 102 F. (2d) 710.

JURISDICTION

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered on March 25, 1939.

QUESTION PRESENTED

This is stated in the Petition (*ante*, pp. 2-3).

STATUTES INVOLVED

As is indicated in the Petition (*ante*, p. 4), pertinent statutes are in the Appendix (*infra*, pp. 33-43).

STATEMENT OF THE CASE

The respondent here, the Texas Company, plaintiff in the District Court and unsuccessful appellant in the Supreme Court of Puerto Rico, appealed to the Circuit Court of Appeals from the judgment of the insular Su-

preme Court affirming that of the District Court of San Juan, which had dismissed the plaintiff's bill for injunction against the Treasurer of Puerto Rico, defendant there and petitioner here. The Circuit Court of Appeals reversed the insular courts, and directed that the injunction be granted. The bill sought to enjoin the Treasurer from enforcing, by distressment, an order of the Workmen's Relief Commission of Puerto Rico entered eight years previously, requiring the Texas Company to pay compensation assessed against it by the Commission on account of the deaths of three laborers accidentally killed on February 12, 1926, while working "in a concrete platform by the side of a warehouse and wharf belonging to plaintiff in the Harbor of Guayanilla, Puerto Rico" (*Complaint, Par. 4; R. 2*), cleaning the platform from earth and stones that had fallen upon it by the side of a natural wall formed by earth, when

"the upper part of said wall land-slided causing said workmen injuries of such a nature that they were retrieved dead."

It is alleged that the Commission directed that the amounts assessed as compensation be paid by the Texas Company, the employer, on the ground (*Complaint, Par. 5; R. 2*) that it "was not an insured employer" under the Workmen's Compensation Act.

The Company did not appeal from the Commission's order; but, instead, undertook to attack it collaterally; first by certiorari, and then, secondly, by this injunction suit. The certiorari proceedings begun in the District Court of San Juan, on June 2, 1928 (*Complaint, Par. 7; R. 3*) about six weeks after the date of the Commission's order of April 24, 1928, were dismissed by the District Court for want of jurisdiction; and its judgment was affirmed by the insular Supreme Court, on the same ground of lack of jurisdiction in certiorari proceedings,

on January 23, 1930 (*Texas Co. v. Workmen's Relief Commission*, 40 P. R. Rep. 456).

The Company not having paid, the Industrial Commission of Puerto Rico, the successor to the former Workmen's Relief Commission, entered an order on September 14, 1936 (*Complaint, Par. 9; R. 4*), directing the Treasurer to levy attachments on the Company's property, in order to collect the amount of the compensation. The Treasurer attached a truck; and the Company again sought to attack the Workmen's Relief Commission's order collaterally, this time, as above stated, by this injunction suit to enjoin the attachment proceedings.

The District Court granted a temporary injunction (R. 8-11), but dissolved it at the hearing, dismissed the Bill (R. 14-19), and denied reconsideration (R. 25); and the District Court's judgment was unanimously affirmed by the insular Supreme Court (R. 26-34). [Mr. JUSTICE CORDOVA DAVILA took no part, because of the illness from which he subsequently died]. The Court allowed a re-argument (R. 48); but, in a second opinion, July 13, 1938, adhered to its former decision, and formally denied the motion for reconsideration (R. 48-53).

The complaint alleges as facts (R. 2-3):

"3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921 (p. 491)¹, that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premium,"

and

"4. That on February 12, 1926, Rodulfo Suarez, Isidro Villoch and Isidro Pérez, laborers employed

¹ Appendix, Footnote 3, *infra*, pp. 38-39.

by plaintiff, died as a result of an accident incident to their work which occurred while they were working together with other laborers, as employees of plaintiff, in a concrete platform by the side of a warehouse and wharf belonging to plaintiff in the harbor of Guayanilla, Puerto Rico, the usual employment of deceased being to help in the embarkment and disembarkment of gasoline drums, the filling of same, placing them in order, and cleaning the warehouse and platform, receiving from plaintiff for said work daily wages fluctuating from \$1.50 to \$1.75. Said accident occurred in the following manner: About 8 o'clock in the morning of said day, as deceased were cleaning the said platform from earth and stones that had fallen upon it by the side of a natural wall formed by earth, the upper part of said wall had-slided causing said workmen injuries of such a nature that they were retrieved dead.

"5. That the Workmen's Relief Commission investigated said accident and after holding public hearings in the three cases, on April 24, 1928, * * * (R. 2-3), handed down orders declaring that plaintiff was not an insured employer, * * * ; and by said orders awarded compensations of \$2,000 to the dependents of each of the deceased and ordained its administrative secretary to prepare the corresponding liquidations and to send to the Attorney General of Puerto Rico a copy of each one of the orders so that said officer proceed, under Section 7 of the law then in force (Act No. 102 of 1925), to collect from plaintiff payment of the resulting amounts."

It also alleges the pleader's conclusions that:

A. As a result of the facts alleged in Paragraph 3 of the Complaint as above quoted, the pleader concludes (Par. 3; R. 2).

"for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926;" and

B. The pleader concludes that the Workmen's Relief Commission's orders of April 24, 1928, described in Paragraph 5 of the Complaint as above quoted, were handed down (Par. 5; R. 2-3),

"arbitrarily and illegally . . . , although it was a matter of record in the said Commission that plaintiff was insured, having complied with all the requisites of the law as above alleged and having paid the premium corresponding to the year within which said accident occurred."

The case was submitted to the District Court for trial upon a "Stipulation of Facts and Submittal of the Case" (R. 12-13), by which it was agreed that

"Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain" (*Italics supplied*),

and submitted questions of law for the Court's determination.

The insular Supreme Court (R. 29-30) upheld the construction put upon this stipulation in the defendant Treasurer's brief in that Court, that

"It is undisputable that what was admitted by defendant by said stipulation were the facts which occurred and which gave origin to all this proceeding since its inception. The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively." (*Italics supplied*)

PETITIONER'S POSITION

Petitioner's primary position here has been stated in the Petition ("Question Presented" and "Petitioner's Position", *ante*, pp. 2-4).

As to other questions discussed in the Circuit Court of Appeals and in the insular courts, it is the position of this petitioner, the Treasurer of Puerto Rico, that:

1. The allegations of facts (*as distinguished from the pleader's conclusions*) contained in the plaintiff company's bill of complaint, wholly fail to demonstrate that the order of the Workmen's Relief Commission was without jurisdiction, or even that (*as the plaintiff company claims*) it was necessarily erroneous on its face; because (a) the allegations of the Bill of Complaint wholly ignore the *proviso* which was contained in Section 13 of the Workmen's Compensation Act in force at the time,—both as it stood on July 15, 1925, the date on which plaintiff alleges (*Complaint, Par. 3; R. 2*) that it filed its statement under the Act with the Workmen's Relief Commission, under the law as amended by Act No. 61 of 1921 (Laws of 1921, p. 490; Appendix, *infra*, Footnote 3, pp. 38-39), and also as it stood on the date of the accident, February 12, 1926, under the later amendatory Act of September 1, 1925, which had meantime taken effect (Laws of 1925, pp. 938-940 (Appendix, *infra*, pp. 36-38)),—prescribing:

"Provided, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference"; (Italics supplied)

and also because (b) the allegations of plaintiff's Complaint likewise wholly ignore the further provision of Section 13 of the Workmen's Compensation Act, as amended by the amendatory Act of September 1, 1925, *supra*,

which, under the emergency clause of that Act (Section 5; Laws of 1925, p. 946; Appendix, *infra*, p. 41), had gone into effect on September 1, 1925, immediately upon its approval, and which did away with the former more lenient provision for the employer (*upon which plaintiff's bill of complaint is apparently bottomed*) whereby his insurance had become effective immediately upon filing the statement with the Commission under Section 13 of the Act, as it stood under the amendments of 1921 (Laws of 1921, p. 490; Appendix, Footnote 3, *infra*, pp. 38-39); and substituted for it the more drastic provision that the insurance should not become effective until the employer had *actually paid* the premiums,—the amended provision reading (Laws of 1925, p. 940; Appendix, *infra*, p. 37):

“The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission, *accompanied by the amount of the assessment corresponding to the percentage of wages declared in said statement in accordance with the rates fixed by the Commission.*” (*Italics supplied*)

In view of the presumption of *omnia rite acta* which necessarily attaches to the official proceedings of a quasi-judicial body such as the Workmen’s Relief Commission, especially as against a collateral attack such as the present injunction suit, *it is plain that the plaintiff-respondent here, before it can claim error,—and far less, nullity,—in the Commission’s order, is bound to foreclose the existence of every circumstance which might support the Commission’s order.*

The present bill of complaint fails to measure up to that requirement. *Non constat* but that:

A. These “laborers employed by plaintiff” (Par. 4; R. 2), “receiving *** daily wages fluctuating from \$1.50 to \$1.75”, who were killed on February 12, 1926, by this

landslide while cleaning the platform "from earth and stones that had fallen upon it", may well have been employed by the plaintiff company within the meaning of the above-quoted *proviso* of Section 13 of the Act,

"for any term or part of a semester",

and the plaintiff company may have failed to file the supplemental sworn statement required by that *proviso* covering their wages, or may have failed actually to pay the extra premium payment required by the *proviso* upon that supplemental statement.

[Such failure on the plaintiff company's part may easily have been due either simply to negligence; or else on the other hand to a mistaken belief on the part of the plaintiff company's officials, with which the Workmen's Relief Commission may have disagreed, that these laborers cleaning that platform on that day may have been in the category of

"those whose labor is of a merely accidental character",

and who are, therefore, "expressly excluded" from the benefits of the Act (Sec. 30; p. 946, Laws of 1925; *Appendix, infra*, p. 41);—and hence the plaintiff may have thought it unnecessary to report them to the Commission in a sworn statement, or to pay the premium on their wages. Either supposition is sufficient to support the Commission's order finding that,—at least as to those laborers,—the Company was not an "insured employer".]

B. *The Company may not actually have paid the premium assessments prior to February 12, 1926, the date of the accident,—either on its original statement which it alleges it had filed on July 15, 1925, or on the supplemental statement covering these laborers on the dock who were killed that day (if any such supplementary statement had*

been filed at all, under the *proviso* of Section 13 of the Act for those laborers for a short "term or part of a semester".) *The bill of complaint fails to allege any date upon which (or before which) the premiums were actually paid.*

Upon either of these possible hypotheses, either "A" or "B", the plaintiff company would not have been an "insured employer" on February 12, 1926, within the meaning of the Act; but, to the exact contrary, an *uninsured employer* (at least in relation to those laborers who were killed), just as the Commission found it to be; since the Act as amended on September 1, 1925; and in force at the date of the accident, expressly required that the employer, in order to have the status of an "insured employer", *should have done all three of these things*, viz: (1) Filed its annual statement on or before the preceding July 15; (2) Filed a supplemental statement (or statements) covering the employment of additional laborers for any short "term or part of a semester"; and (3) have actually *paid* the premiums assessed, both (a) upon the annual statement of July 15, and also (b) upon the supplementary statement (or statements) covering the short-term laborers for "any term or part of a semester".

Until, or unless, it had done all of those things, it was not an "insured employer" under the Act.

As above pointed out, this plaintiff-respondent company, in this collateral attack upon the Commission's order, is bound, in order to succeed, to negative all possible hypotheses upon which the order might be sustained. It has not done so. The Bill of Complaint is wholly silent on all these matters. On its face, therefore, the bill fails to sustain the plaintiff's claim that the Commission's order was necessarily erroneous; far less, that it was a "nullity" that may be simply disregarded upon a collateral attack, such as by this injunction suit.

2. In relation to other matters discussed in the lower courts, appellee's position is stated in the "Summary of Argument" (*infra*, pp. 15-16).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Question Presented" and "Petitioner's Position" in the Petition (*ante*, pp. 2-4). As there indicated, the primary error of the Circuit Court of Appeals was in overruling the insular Supreme Court's interpretation of the local Territorial statute.

SUMMARY OF ARGUMENT

The Insular Supreme Court's interpretation of section 9 of the Puerto Rican Workmen's Compensation Act as amended by the Act of September 1, 1925; as to the scope of the appeal allowed to the employer from the Commission's awards of compensation for death or injuries to employees, was not unreasonable, nor "clearly wrong". On the contrary it was reasonable and right, and should not have been disturbed by the Circuit Court of Appeals.

The allegations of facts (*as contra-distinguished from the pleader's conclusions*) contained in the plaintiff-respondent company's Bill of Complaint wholly fail to demonstrate that the Commission's order was without jurisdiction, or even that it was necessarily erroneous on its face, and are therefore wholly insufficient to support this collateral attack upon it by this injunction suit; since, in view of the presumption of *omnia rite acta* which necessarily attaches to the official proceedings of a quasi-judicial body such as the Workmen's Relief Commission, as against such a collateral attack upon it, it is plain that the plaintiff-respondent here, before it can claim error,—*and far less, nullity*,—in the Commission's order, is bound to foreclose the existence of every circumstance which might reasonably support the Commission's order; which the Bill of Complaint here fails to do.

Hence, since the Commission's decision was upon a question within its jurisdiction, it may not be assailed by collateral attack, by this injunction suit.

Plaintiff had a plain, adequate and complete remedy at law by appeal from the Commission's order, as was held by the insular Supreme Court.

The Treasurer's procedure to enforce payment by the Texas Company in accordance with the orders of the Workmen's Relief Commission and the supplemental orders of its successor, the present Industrial Commission, is in accordance with the provisions of the local statutes, and is correct, as was held by the insular Supreme Court. The decision of the Circuit Court of Appeals to the contrary, overruling the insular Supreme Court, is based upon and follows the Circuit Court's erroneous holding in relation to the primary question of the scope of the employer's right of appeal under section 9 of the 1925 Act, as to which the Circuit Court wrongly overruled the Territorial Supreme Court.

ARGUMENT

POINT I

The Circuit Court of Appeals was wrong in overruling the decision of the Supreme Court of Puerto Rico as to the scope of the appeal given to employers by section 9 of the Puerto Rican Workmen's Compensation Act as amended by the Act of 1925.

The decision of the insular Supreme Court was clearly right.

A. Section 9 of the Workmen's Compensation Law of Puerto Rico, as amended by Act No. 102 of September 1, 1925 (Laws of 1925, p. 930; Appendix, *infra*, p. 35) provided:

"Section 9. Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries ***. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this act." (*Emphasis supplied*)

The third paragraph of section 2 of the same law, likewise as amended by the same Act No. 102 of September 1, 1925, provided (Laws of 1925, pp. 906-908; Appendix, *infra*, p. 33):

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed ***; *Provided*, That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment *** payable from the government trust fund." [Fund created from contributions of insured employers, under Sections 27 and 28 of the Law, as amended by the Act of September 1, 1925; Laws of 1925, pp. 944-946; Appendix, *infra*, p. 40].

Sections 7 and 20 of the law, likewise as amended by the same Act No. 102 of September 1, 1925 provided (Laws of 1925, pp. 924-926, 942-944; Appendix, *infra*, pp. 34-35, 39-40):

"Section 7. Every employer subject to the provisions of this Act *** shall report to the Workmen's Relief Commission *** all injuries suffered by his employees in the course of their employment.

"Such reports shall be upon printed blanks *** and shall contain ***

"The Workmen's Relief Commission shall have power to direct investigation of accidents. *** shall make a thorough investigation of accidents and shall establish the cause or causes thereof, the character, nature, and extent of the injuries sustained, *** including *** such other facts and circumstances as in the opinion of the Commission may enable it to pass judgment on the claim for the relief of the injured workmen when the said claim shall be presented to the Commission as herein provided.

"The Workmen's Relief Commission shall have the power to make such further investigations ***

"In the case of an accident to a laborer while working for an *employer* who in violation of the law is *uninsured*, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action in a court of competent jurisdiction, *against said employer* to recover the aforesaid sum; *Provided, however, That the Commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible to the practices observed by the courts of justice.*" (*Italics supplied*)

"Section 20. If any accident occurs to any workman employed by an *employer* subject to the provisions of this Act, who has failed to comply with said provisions relative to the submission of reports and the payment of premiums on the dates hereinbefore specified, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation to be paid injured

workman plus expenses in the case. * * * " (*Italics supplied*)

B. In the present case, after the deaths of three of the Texas Company's employees, laborers cleaning a platform by the side of a warehouse and wharf, overwhelmed by a landslide (R. 2), the Commission held a hearing in accordance with section 7 of the Act; *supra*, found that the Texas Company "was not an insured employer", determined the proper compensation for each of the three deaths, and directed the Attorney General to collect the respective amounts from the company,—all in accordance with sections 7 and 20 of the Act (Bill of Complaint, Pars. 5, 6; R. 2-3).

The Texas Company, plaintiff-respondent, the employer, did not appeal; but, instead, after waiting until after the expiration of the time for appeal fixed by the statute, undertook to attack the Commission's order collaterally; *first* by *certiorari*, unsuccessfully (Complaint, Par. 7; R. 3); and then, *secondly*, by this injunction suit (*ante*, Statement, pp. 7-8).

C. The Supreme Court of Puerto Rico said in the *certiorari* case, upon the company's appeal, in affirming the judgment of the District Court dismissing those proceedings for want of jurisdiction (*Texas Co. vs. Workmen's Relief Commission*, 40 P. R. Rep. 456, 458):

"Furthermore the appellant does not convince us that an appeal to review the decision complained of did not lie under section 9 of the Act of 1925, laws of that year, page 930. It provides: * * * [quoting it as above, *ante*, p. 17].

"A general appeal, it would seem, could raise the incidental question. * * *

"We find nothing in the laws of Porto Rico to authorize the *certiorari* solicited and the judgment will be affirmed." (*Emphasis supplied*)

D. In the present case the Supreme Court of Puerto Rico, after pointing out that this company had already at-

tacked the Commission's order by those *certiorari* proceedings on the ground of supposed nullity, and after quoting with approval what it had said in that case, as above quoted, added (R.32; 52 P. R. Dec. 658, 666):

"No other recourse was taken by plaintiff and the order remained standing, no effort being necessary to conclude that after the years passed, plaintiff is not in position to do now by injunction what in due time it could have done by the means placed at its disposal by the law."

E. The effect of these two decisions of the Supreme Court of Puerto Rico was to hold squarely that the employer was entitled to recourse by appeal from the Commission's decision *in any case* where, in the language of section 9 of the Act, *supra*,

"such decision is to the effect that the accident is one for which compensation is granted under this Act",

regardless of whether the compensation thus "granted" by the Commission is payable out of the government trust fund. [Sec. 2, "Insured employer"] or, as in the present case, where the Commission has "determined" the "proper compensation", and has "charge[d] said employer with the amount of such compensation" under sections 7 and 20 of the *Act to be paid by the employer itself as "an employer who in violation of the law is uninsured".*

F. It is submitted that that interpretation of the statute by the insular Supreme Court, as allowing an appeal to the employer in either case, is wholly reasonable, and is entirely in accord with the language of section 9 of the Act.²

² Respondent company itself, in its brief as appellant in this case in the Circuit Court of Appeals, did not question this interpretation of the Act by the insular Supreme Court; but, to the contrary, expressly said (*Appellant's*

There is certainly nothing on the face of the language of section 9 in any way expressly limiting the employer's right of appeal to the single situation where the compensation adjudged by the Commission is to be paid out of

Brief, Circuit Court of Appeals, in this case, No. 3380 in that court, pp. 10-11):

"However, the statute referred to provides that the employer may appeal from a decision of the Workmen's Relief Commission only 'when such decision is to the effect that the accident is one for which compensation is granted under this Act' (Laws of Puerto Rico, 1925-26, p. 930). It has never been disputed in this proceeding that the accident is one for which compensation is granted. * * *

" * * * Furthermore, the only ground upon which 'a general appeal' could be taken, in which to raise the 'incidental question' referred to, was that the accident was not one for which compensation could be granted and plaintiff has never disputed that this was an accident for which compensation should be granted." (Emphasis supplied)

Respondent's argument, as appellant in the Circuit Court of Appeals, ran along different lines, not followed by that court, viz., that although the employer was actually entitled to have its appeal, yet that [for some unexplained reason] the appeal could not reach the "sole question at issue" of "whether the Workmen's Relief Commission could legally direct that the award should be paid by the employer, rather than out of the State Fund" [Appellant's Brief; C. C. A., No. 3380, "Point II", p. 10; italics those of respondent, appellant there].

Neither the Circuit Court of Appeals nor the insular Supreme Court agreed with respondent in that position.

The idea that no appeal lay at all for the "uninsured" employer (R. 62-64), apparently originated with the Circuit Court of Appeals itself.

A certified copy is presented herewith of respondent's brief as appellant in the Circuit Court of Appeals [No. 3380 there]. Attention is particularly invited to its "Point II" (pp. 10-12).

the government trust fund, or in any way expressly excluding the other situation where the compensation assessed is to be paid by the employer himself because of being "uninsured"; and no reason is suggested in the Circuit Court of Appeals' opinion why the Legislature should have intended to limit the employer's right of appeal to the one situation, and to exclude the appeal in the other situation.

To the contrary it seems more reasonable to believe that if the Legislature had intended to draw any distinction at all between the two situations, it would rather have preserved the right of appeal in the latter situation where the award assessed by the Commission is payable by the employer himself, because that is the only situation, where, financially, the employer is directly interested in the fact of the award, or in its amount; since, in the first situation where the award is payable out of the government trust fund, the employer is not directly affected. It does not come out of his pocket. And yet the ruling of the Circuit Court of Appeals (R. 62-64, *supra*) is that the Legislature intended to deny him the appeal in the only case where he is financially interested, and to grant it to him only where he is not directly financially interested at all.

G. On the face of it, it would seem to require very positive language on the Legislature's part in order to support such a one-sided interpretation of the statute. It seems unreasonable on its face. It is submitted that the insular Supreme Court's contrary interpretation construing section 9 as broadly granting the right of appeal to the employer in either situation,—and thus preserving to him the right of appeal in the only situation in which he is really directly financially interested,—viz., where the award would have to be paid out of his own pocket, the very situation in which the Circuit Court of Appeals would deny it to him,—is the only reasonable interpreta-

tion of the statute, and should have been sustained. The Circuit Court of Appeals was wrong in overruling it.

POINT II

The decision of the Circuit Court of Appeals overruling the Insular Supreme Court's interpretation of this local insular statute is in conflict with the applicable decisions of this court as to the respect to be paid to the decision of a Territorial court of last resort interpreting a local Territorial statute.

The rule has been established for three quarters of a century. This court applied it with reference to decisions of the Territorial supreme courts of the Territories within the continental United States, long before there were any off-shore Territories, [*Sweeney vs. Lomme*, 22 Wall. 208,] and has consistently applied it during the last forty years with reference to decisions of the Supreme Courts of Hawaii, the Philippine Islands, and Puerto Rico.

With reference to the Supreme Court of Puerto Rico, the rule has very recently been re-stated in this court's opinion in the case of *Rafael Sancho Bonet, Treasurer of Puerto Rico vs. Yabucoa Sugar Co.*, decided March 27, 1939 [No. 498 at the present Term of this court] where, in reversing the Circuit Court of Appeals, First Circuit, and reinstating the decision of the Supreme Court of Puerto Rico which the Circuit Court of Appeals had reversed in that case, this court said [at pp. 3-4 of the Opinion; 306 U.S.; 83 L. Ed. 607; 609-10, *Advance Sheets*]:

"And this Court has declared its unwillingness to overrule Porto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute and to sustain such a construction in the absence of clear or manifest error.

"Taxing acts of Puerto Rico are 'purely local'" [as is likewise the *Workmen's Compensation Act*

here involved] "and the traditional reluctance of this Court to overturn constructions of such local statutes by local courts is particularly applicable to interpretations of Puerto Rican statutes by Puerto Rican tribunals. Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

And the earlier decisions there cited and relied upon by this court are substantially to the same effect. *Nadal v. May*, 233 U. S. 447, 454; *Sante Fe Ry. v. Friday*, 232 U. S. 694, 700; *Phoenix Ry. Co. v. LaFeldis*, 231 U. S. 578, 579; *Villanueva v. Villanueva*, 239 U. S. 293, 299; *Waialua Co. v. Christian*, 305 U. S. 91, 109; *Inter-Island Co. v. Hawaii*, 305 U. S. 306, 311; *Diaz v. Gonzalez*, 261 U. S. 102, 105, 106; *Cordova v. Folgueras*, 227 U. S. 375, 378, 379.

Under this rule the Circuit Court of Appeals should have deferred to the insular Supreme Court's interpretation of this local statute.

As we have said (Petition, "Reasons for Granting the Writ", *ante*, p. 5), this rule embodies an important principle of federal law with relation to the administration of the Territories. It should not be disregarded nor minimized by the Circuit Court of Appeals.

POINT III

The Texas Company, plaintiff-respondent, had a plain, adequate and complete remedy at law by appeal from the order of the Workmen's Relief Commission of April 24, 1928; and, therefore, cannot now maintain this collateral attack upon the order by this injunction suit.

A.—That was the decision of the insular Supreme Court (R. 32) quoted above (*ante*, p. 20).

B.—It is the result that necessarily follows from the

holding of the insular Supreme Court that section 9 of the local Act extended the right of appeal to this "uninsured" employer; which, as we have said above (*ante*, pp. 17-24, Points I and II), should not have been disturbed by the Circuit Court of Appeals.

POINT IV

There was no possible lack of jurisdiction in the findings or orders of the Workmen's Relief Commission. No possible question of "nullity" is here involved.

A: *If the Commission's findings were incorrect or mistaken in any way, then it was at the most simply a case of error;*—of erroneous decision of a matter which the Commission was called upon to decide, within the scope of its statutory powers.

It was not in any way a case of stepping outside of its statutory powers, or of attempting to decide a matter that it was not called upon to decide, or which lay beyond the range of its powers and duties.

Therefore, no question of lack of jurisdiction,—or of "nullity",—is here involved, upon which to sustain this collateral attack, by this injunction suit, upon the Commission's findings and orders.

B: Manifestly the Commission was called upon to investigate, and to hold public hearings, and to find and to decide "the cause" of the accident, the "character, nature and extent of the injuries sustained", and whether or not the accident occurred "to a laborer while working for an employer who in violation of the law is uninsured", and in that case to "determine proper compensation" and report it to the Attorney General for institution of proper action "against said employer to recover the aforesaid sum". All of that was the Commission's express statutory duty under Section 7 of the Act, as amended September 1, 1925 (Laws of Puerto Rico, 1925, pp. 924-926; Appendix *infra*, pp. 34-35). And the Com-

mission was further expressly "authorized to charge said employer with the amount of such compensation to be paid injured workmen plus expenses in the case", by Section 20 of the same Act as amended the same date, September 1, 1925 (Laws of 1925, pp. 942-944; *Appendix infra*, pp. 39-40). Plaintiff's allegations show (*Bill of Complaint*, Par. 5; R. 2-3) that the Commission proceeded to do its duty under these statutory provisions, and that it "investigated said accident and after holding public hearings in the three cases" handed down its findings and its orders.

C. No criticism is made of the Commission's procedure. It is not even suggested that it was doing anything outside of its statutory duty; the only criticism is that the plaintiff thinks that its conclusion was wrong.

D. That is simply to claim that it committed *simple error* in its findings upon the evidence before it. But error does not affect jurisdiction. To say that an order or judgment is erroneous does not mean that it is void, or that it may be disregarded as a nullity upon collateral attack.

E. Plainly, if this injunction suit had been brought during those hearings before the Commission, and prior to the time when the Commission arrived at its conclusions, and an attempt had thus been made to halt the Commission's proceedings by such a collateral attack before it had arrived at its decision, on the ground that it had no jurisdiction or that its proceedings were a "nullity", the suit would have been laughed out of court. No pretense could have been made that the Commission did not have the power, or that it was not its statutory duty, to proceed to hear the evidence and to determine the questions involved,—including the question of fact,—(or of mixed law and fact),—as to whether or not the Texas Company, the employer of these laborers who were killed, was or was not (*at least in relation to them*) an "unin-

sured employer". That was a part of the Commission's duty.

F. Then, how can the fact that the Commission actually decided this question,—which it was a part of its duty to decide,—one way, rather than the other way, be said to affect its jurisdiction in any way? How can it affect the Commission's *jurisdiction* that its decision was that the plaintiff actually was an *uninsured employer*; rather than that it was an insured employer; as to these workmen?

G. It is plain that it cannot affect it in any way; that it is not a question of jurisdiction that is here involved. It is, at the most, only a question of *alleged error* on the Commission's part in arriving at its decision on a matter within its jurisdiction, and which it was its express statutory duty to decide.

If the employer thought the decision wrong, it should have challenged it by appeal [Points I, II and III, *ante*, pp. 17-25].

POINT V

Since the Commission's decision was upon a question within its jurisdiction, it may not be assailed by collateral attack, such as this injunction suit.

A. The usual rule is applicable here, which applies to collateral attacks upon the decisions of all statutory or administrative tribunals or inferior courts of limited jurisdiction, viz., that while their jurisdiction will not be presumed, but must affirmatively appear; yet, within the scope of their jurisdiction, their judgments are as final and binding as those of any superior court or other tribunal, and are just as unassailable upon collateral attack. Compare, for example, the court martial: *Ex Parte Reed*, 100 U. S. 13, 23. The rule is the same as that applicable to justices of the peace. It needs no citation of authority.

B. It follows, therefore, that the findings and order of the Commission in this case, unassailed by direct appeal; became *res adjudicata* when the statutory period for appeal had elapsed; and thereafter were not subject to collateral attack; and, hence, are not subject to collateral attack by this injunction suit.

C. This plaintiff-respondent did not appeal from the Commission's order. No appeal was taken.

POINT VI

The Treasurer's procedure to enforce payment by the Texas Company in accordance with the order of the Workmen's Relief Commission and the supplemental order of its successor, the present Industrial Commission, by attachment, is in accordance with the provisions of the local statutes, and is correct.

A. That was the decision of the insular Supreme Court, interpreting the local statutes involved, after carefully reviewing them (*Opinion*, R. 32-34), to which it adhered upon reargument (*Opinion*, R. 49-53). Both of those opinions were unanimous. [Except that MR. JUSTICE CORDOVA DAVILA, who was seriously ill, took no part in either of them.]

B. Both of these opinions appear to be clear and convincing. Like the interpretation given by that Court to the provision concerning appeals, in section 9 of the statute, *supra*, they are within the rule that a local Territorial Supreme Court's interpretation of local Territorial statutes will not be disturbed, unless "clearly erroneous". The insular Supreme Court's interpretation of the local statutes here involved, which, if analyzes in these opinions, and which it concludes uphold the power of the Treasurer to proceed by attachment in this case, is certainly not "clearly erroneous". On the contrary, like its interpretation of section 9 of the Act, *supra*, its interpretation here also appears to be reasonable and right. It should not have been disturbed by the Circuit Court of Appeals.

C. That part of the opinion (R. 64-68) of the Circuit Court of Appeals overruling this part of the opinion of the Territorial Supreme Court of Puerto Rico is bottomed chiefly upon the primary decision of the Circuit Court of Appeals (R. 62-64) above discussed in Points I and II (*ante*, pp. 17-24) overruling the decision of the insular Supreme Court as to the employer's right of appeal from the Commission's order in this case and holding, contrary to the Territorial Supreme Court's decision, that the Texas Company here, as an "uninsured" employer, had no such right of appeal.

Bottomed upon that primary [*erroneous*] holding, the Circuit Court of Appeals then further holds that the Texas Company had, therefore, no plain, adequate or complete remedy at law against the Commission's order; and accordingly that, unless this collateral attack by injunction suit were sustained, the Texas Company would never have had any fair opportunity to present its defenses of its claims of erroneous action on the part of the Commission, and would thus be deprived of all substantial remedy and of any opportunity of any kind for a judicial adjudication of its case, and that thus "fraud" would, in effect, be practiced upon it.

The Circuit Court of Appeals says (R. 64):

"We therefore conclude that the Supreme Court" [of Puerto Rico], "if it intended to rule that the plaintiff had a remedy by appeal under Section 9 and that the remedy thus afforded was as complete and adequate as the one sought by the bill (which it did not hold unless by inference), it was clearly wrong in so holding. . . . Under these circumstances, if the plaintiff's bill is not retained and the Treasurer restrained from collecting the orders by distress the plaintiff will be deprived of its remedy by defense and fraud will be practiced upon it. This equity will not permit."

D. But, as above pointed out; *that is all bottomed upon the Circuit Court of Appeals' primary erroneous action* in overruling the local Supreme Court's interpretation of section 9 of the local Act as actually extending the right of appeal to this "uninsured" employer (Points I and II, *ante*, pp. 17-24). **The Texas Company really did have the right of appeal, and made no attempt to avail itself of it.** Hence, as the insular Supreme Court said, as above quoted (R. 32; *ante*, p. 20),

"plaintiff is not in position to do now by injunction what in due time, it could have done by the means placed at its disposal by the law."

E. Here again the rule applies of the respect to be accorded to a decision of the local Territorial Supreme Court interpreting local Territorial statutes. (Point II, *ante*, pp. 23-24).

This part of the insular Supreme Court's decision consists likewise of interpretation of various local Territorial statutes, and of the discussion and application of local judicial and administrative procedure. It is matter manifestly peculiarly within the scope of the rule. It should not have been disturbed by the Circuit Court of Appeals.

CONCLUSION

The judgment of the Supreme Court of Puerto Rico affirming that of the District Court of San Juan dismissing the plaintiff-respondent's bill of complaint was right, and should have been affirmed by the Circuit Court of Appeals. It rested upon the Territorial Supreme Court's interpretation of various local statutes, primarily upon its interpretation of section 9 of the local Workmen's Compensation Act as to the scope of the right of appeal granted to the "employer".

The Territorial Supreme Court's interpretation was

right and reasonable in itself; and the decision of the Circuit Court of Appeals reversing it is in conflict with the applicable decisions of this court as to the deference to be accorded to such decisions of Territorial supreme courts interpreting local Territorial statutes.

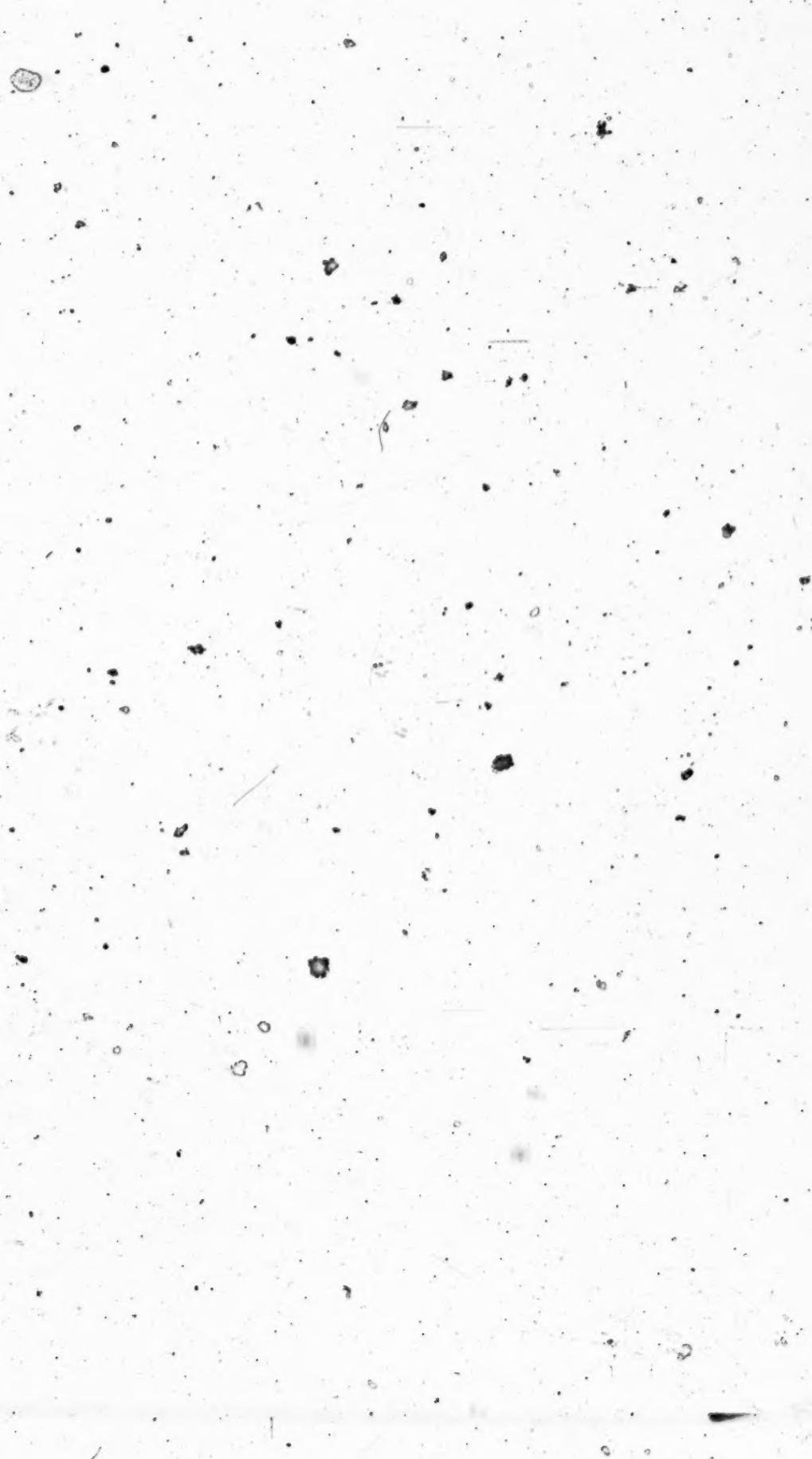
The judgment of the Circuit Court of Appeals should be reversed, and that of the Supreme Court of Puerto Rico affirmed.

Respectfully submitted,

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APPENDIX



APPENDIX

Pertinent sections of the Workmen's Compensation Law of Puerto Rico, as amended by Act No. 102, approved September 1, 1925 [Laws of Puerto Rico, 1925, pp. 904, et seq.].

"EMPLOYMENTS COVERED"

"Section 2.—That the provisions of the Act shall apply to laborers injured or disabled or who lose their lives from accidents occurring because of any act or function inherent in their work or employment and while engaged therein and as a consequence thereof, or from occupational diseases or death due to such occupation, as hereinafter specified; *Provided*, That the provisions of this Act shall be applicable to members of municipal fire corps, for which purpose each municipality shall include salaried firemen in its report on employees, made as an employer.

"Domestic servants and employees engaged in clerical work, in offices of any kind and commercial establishments where machinery is not used, are excepted.

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided*, That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, payable from the government trust fund.

"The sums so paid need not to be reimbursed to The People of Puerto Rico out of the fund created by this Act.

"The Commissioner of the Interior is hereby authorized

to make advances on account of their compensation, to workmen injured on public works, which advances shall be reimbursed to said official, if justified, out of the compensation to workmen injured on public works. (*Laws of 1925*, pp. 906-908).

"Section 7.—Every employer subject to the provisions of this Act, or the person representing him in business, shall report to the Workmen's Relief Commission as soon as possible, within a period of five days from the date of the accident, all injuries suffered by his employees in the course of their employment.

"Such reports shall be upon printed blanks furnished upon request by the commission, and shall contain the name and nature of the business of the employer, the location of the establishment or place of business, the name, age, sex and occupation of each injured employee, and shall state the date and hour of the accident, the nature and cause of the injuries sustained and such other information as the Workmen's Relief Commission may deem pertinent to request.

"The report made by the employer under the provisions of this section shall not be evidence against the employer in any proceeding under this or any other act.

"The refusal or neglect of any employer or his agent to make the report required by this section, shall constitute a misdemeanor and shall be punishable by a fine of not less than twenty-five (25) nor more than fifty (50) dollars for each offense.

"The Workmen's Relief Commission shall have power to direct the investigation of accidents by such investigators or agents as shall have been or shall hereafter be appointed by it for such purposes. The said investigators or agents shall make a thorough investigation of accidents and shall establish the cause or causes thereof, the character, nature and extent of the injuries sustained, and shall file a full report of the said facts with the Commission, including in the said report such other facts and

circumstances as in the opinion of the Commission may enable it to pass judgment on the claim for the relief of the injured workman when the said claim shall be presented to the commission as herein provided.

"The Workmen's Relief Commission shall have the power to make such further investigations as it may deem necessary for the purposes of this Act.

"The Workmen's Relief Commission or any of its members, and its investigators or agents, are hereby expressly authorized to subpoena witnesses, under warning of punishment for contempt, to take oaths and declarations, to examine books and documentary evidence material to the case under investigation, and to visit and inspect the buildings, machinery and other property where any accident to a workman may have occurred.

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum; Provided, however, That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice." (*Laws of 1925, pp. 924-926*).

"Section 9.—Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act.

"Said appeals shall be taken by filing in the office of the secretary of the district court, within thirty days after

service of notice of the decision of the commission, a written statement of the ground for the claim and a statement of the facts on which the appeal is based. • • •" (*Laws of 1925*, p. 930).

"DUTIES OF EMPLOYERS"

Section 13.—It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in sections 11 and 12 of this Act shall be computed; Provided, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, devy and collect additional premiums on the difference.

"Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property of the employer as soon as the same shall be left unpaid upon service of notice to pay.

"If the employer fails to file such statement on or

before the date above-specified, the commission shall grant him twenty days more in which to do so; Provided, That if upon the expiration of said period the employer fails to file said statement, he shall be guilty of misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars, in the discretion of the court.

"The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission, accompanied by the amount of the assessment corresponding to the percentage of wages declared in said statement in accordance with the rates fixed by the Commission; Provided, That this shall in no way affect the right of the laborer to the corresponding compensation.

"It shall be the duty of every employer entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to, every one of the said laborers; Provided, That if any employer fails to comply with this requisite, he shall be guilty of misdemeanor punishable by a fine not to exceed fifty (50) dollars.

"The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

"Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the differ-

ence between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act." (*Laws of 1925*, pp. 938-942).

³ Section 13 of the Act, as amended in 1921 by Act No. 61, approved July 14, 1921 (*Laws of Puerto Rico, 1921*, 472, 490-492), and as it stood on July 15, 1925, the date when, as the plaintiff-respondent's bill of complaint alleges [Par. 3; R. 2], the Company filed its "Statement in Duplicate" under the Act [*six weeks before the amendment of September 1, 1925, Act No. 102, supra, took effect under its emergency clause*], read as follows:

Section 13.—It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in Sections 11 and 12 of this Act shall be computed; *Provided*, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference. Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property of the employer just as soon as the same shall be left unpaid.

"Section 20.—If any accident occurs to any workman employed by an employer subject to the provisions of this Act, who has failed to comply with said provisions relative to the submission of reports and the payment of

upon service of notice to pay. The insurance of every employer shall become effective on the date on which his payroll or statement is filed in duplicate in the office of the commission; and *Provided*, That this shall in no way affect the right of the injured laborer to the corresponding compensation.

The failure to file such statement on or before the date above specified shall constitute a misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars, in the discretion of the court. Blanks for such statements shall be furnished upon request by the Workmen's Relief Commission.

It shall be the duty of every employer of laborers entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to everyone of the said laborers.

The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the difference between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act.

premiums on the dates hereinbefore specified, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation to be paid injured workman plus expenses in the case. The commission shall report to the Attorney General the total amount of said compensation, plus the expenses in the case, in order that he, by proper action in a court of competent jurisdiction, may obtain payment of said sum."

• • • (*Laws of 1925, pp. 942-944.*)

"CREATION OF A TRUST FUND"

"Section 27.—That the amounts existing in the Workmen's Relief Trust Fund created by section 1 of an act entitled 'An Act providing for the relief of such workmen as may be injured, or of the dependent families of those who may lose their lives while engaged in trades or occupations and for other purposes', approved April 13, 1916, are hereby reappropriated to carry out the provisions of this Act and shall constitute the Workmen's Relief Trust Fund hereby created together with such other sums as are hereinafter specified. *Laws of 1925, p. 944.*

"Section 28.—That all employers employing workmen subject to the terms of this Act, shall be bound to contribute to the 'Workmen's Relief Trust Fund' in the form and manner provided herein; *Provided*, That any employer may file with any district court an application for a writ of *certiorari* in order that said court may review any decision of the commission on the levying of assessments, provided said application is made within thirty (30) days after the date of the service of notice of the levying of such assessment; *And provided, further*, That the legality of any premium fixed by the commission may be reviewed by means of *certiorari* proceedings in same manner and form hereinbefore specified, provided the application is made within the same term of thirty (30) days above established." *Laws of 1925, pp. 944-946.*

"DEFINITIONS"

"Section 30.—For the purposes of this Act 'laborer' or 'employee' shall be understood to be any person at the service of any individual, partnership or corporation regularly employing one or more persons under any express or implied service contract, whether verbal or written, and whether such person is man, woman or child; *Provided*, That such laborers or employees working for employers not included in the insurance established in this Act, and those whose labor is of a merely accidental character are expressly excluded.

"The word 'laborer' or 'employee' includes all workmen employed in any manufacturing or agricultural establishment or occupation by any natural or artificial person, for compensation; and by the Insular Government or any of its dependencies, according to the purposes of this Act. (*Laws of 1925*, p. 946).

Section 5.—This Act, being of an urgent nature, shall take effect immediately after its approval. (*Laws of 1925*, p. 946).

Act No. 85, approved May 14, 1928; Laws of 1928, pp. 630-690.

Section 25.—In case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Industrial Commission shall determine proper compensation, plus expenses incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property; *** (*Laws of Puerto Rico, 1928*, p. 662).

Section 48.—The provisions of this Act shall in no way affect pending litigation relative to workmen's compensation under previous laws. (*Laws of Puerto Rico, 1928*, p. 690).

Section 57.—All laws or parts of laws in conflict here-with are hereby repealed. (*Laws of Puerto Rico, 1928*, p. 690).

Act No. 45, approved April 18, 1935; *Laws of 1935*, pp. 250-330.

Section 15.—In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; *Provided, further*, That the Commission shall grant the employer as well as the workman or employee in the case an opportunity to be heard and to defend themselves, conforming as far as possible to the practice observed in the district courts; *And provided, also*, That after the parties have been summoned by such means as the Commission may adopt, should they, or either of them, fail to appear for hearing and defense, it shall be understood that such party or parties waive their rights, and the Commission may decide the case in default, without further delay. . . .
(*Laws of 1935*, p. 292).

Section 34.—The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force

on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws. (*Laws of 1935*, pp. 318-320).

Section 51.—Act No. 85, approved May 14, 1928, as subsequently amended, is hereby expressly repealed, with the exception of the provisions in Sections 40 and 47, both inclusive, of this Act, in regard to the decision and liquidation of cases pending under said Act (*Laws of 1935*, p. 330).